

**BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA**

**In the Matter of:**

**Jack T.,**

**Claimant,**

**vs.**

**HARBOR REGIONAL CENTER,**

**Service Agency.**

**OAH No. L 2006120438**

**DECISION**

Sandra L. Hitt, Administrative Law Judge (ALJ) with the Office of Administrative Hearings, heard this matter on January 11, 2007, in Torrance, California. Claimant, Jack T. (Claimant), was represented by his mother, who is Claimant's authorized representative.<sup>1</sup> Hiram Bond, Program Manager for the Harbor Regional Center, represented the Service Agency.

Service Agency's sole witness, Occupational Therapist and Harbor Regional Center Program Manager Pamela Hellman, was unavailable on the hearing date, and did not testify. Nevertheless, Service Agency elected to go forward with the hearing, presenting only the documents represented by Exhibits A-K, all of which were admitted into evidence. Claimant's mother testified on his behalf at the hearing, and presented Exhibit 1, which was admitted into evidence. The record was held open until January 26, 2007, for Claimant to submit additional documentary evidence, and for the Service Agency to object or otherwise respond to this additional evidence. Claimant timely submitted the following documents: (1) a website printout from Ride to Fly Therapeutic Riding Program, (2) a website printout from the Pegasus Program, (3) a website printout from the North American Riding for the Handicapped Association (NARHA) containing information about therapeutic riding, (4) session notes for Jack T. from Ride to Fly. These documents were marked for identification as Claimant's Exhibits 2, 3 4 and 5, respectively. Service agency did not object to the admission of these documents and

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<sup>1</sup> Claimant's surname, and that of his family members, is omitted throughout this Decision to protect their privacy.

these documents were admitted into evidence. The record was closed, and the matter was submitted, on January 26, 2007.

## **ISSUE**

Must the Service Agency reinstate the funding for Claimant's Equestrian therapy Program ("Ride to Fly")?

## **FACTUAL FINDINGS**

1. On December 4, 2006, Claimant's mother filed a Request for Fair Hearing on the issue of whether the Service Agency should be required to continue funding for Claimant's equestrian therapy.<sup>2</sup> This hearing ensued.

2. Jack T. is a 6-year-old boy (date of birth: April 27, 2000) with diagnoses of cerebral palsy and mental retardation. Claimant has many intense needs and requires constant supervision. He has been assessed as needing physical therapy (PT) (Exhibit F). He cannot sit or walk independently, nor can he dress himself. He cannot drink from a cup or glass without assistance, although he can drink with a straw. He can use a fork or spoon, but is a messy eater. He can finger feed himself, but is generally fed by an adult, as if left to feed himself, he will under eat. He is a client of the Harbor Regional Center. He also receives a school program from Palos Verdes Peninsula Unified School District (PVPUSD) (Exhibit E). Claimant attends a developmental kindergarten at Rancho Vista Elementary School. Through PVPUSD, Claimant receives one half-hour of individual occupational therapy (OT) per week and one half-hour of small group OT. Claimant also receives one half-hour of adapted physical education twice per week and fourteen 20-minute sessions of adapted physical education per month. (Exhibit J). Claimant's March 23, 2006, Individual Family Service Plan (IFSP) reflects that Claimant is receiving one hour of PT per week through PVPUSD. However, Claimant's mother informed Service Agency on March 23, 2006 that Claimant was not receiving PT through his school. Likewise, Service Agency was under the impression that Claimant was receiving PT once per week through California Children's Services (CCS). Claimant's CCS-provided PT was discontinued in May 2006.

3. Before moving back to California, Claimant lived for a time in Colorado, where he participated in the Pegasus therapeutic riding program. Claimant enjoyed his riding program in Colorado and it improved his trunk strength. After moving to southern California, Claimant's family enrolled him in the RTF program and requested that Service Agency fund this program for Claimant.<sup>3</sup> Claimant's family believes that RTF has been very successful for him, and that he benefits greatly from it. Physical therapist Jan Schlesinger provided Service Agency with a report stating that Claimant would

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<sup>2</sup> Equestrian therapy is sometimes referred to as hippotherapy or therapeutic riding.

<sup>3</sup> Claimant's family privately funded his RTF program prior to March 2006.

“benefit from a horse back riding program to enhance his physical abilities...the trunk control, head and neck control...that he would receive from a riding program...would help him in his endeavor to gain more control of his body positioning.” (Exhibit J.) Service Agency originally denied funding for Claimant’s Ride to Fly (RTF) program on August 8, 2005, because, it believed that Claimant’s “needs such as building head and neck control as well as balance and strength should be addressed through the physical therapy he is receiving.” (Exhibit J.)

4. On March 23, 2006, Service Agency agreed to fund one session per week at RTF, for a period of six months, with reconsideration at the end of that period (Exhibit E). The six-month period did not begin right away, due to the fact that Claimant was scheduled to undergo surgery, and would require a period of recuperation before he could resume his RTF program.<sup>4</sup> Equestrian therapy was identified as a provided service in Claimant’s April 24, 2006 IFSP<sup>5</sup>, along with 24 hours of respite, three weeks of camp, Managing Behavior Class #1, and an in-home assessment by FBS (10 hours/3 months) (Exhibit J). Among the goals identified in the IFSP are: (1) Claimant will function as independently as possible in the home environment, and (2) that Claimant will increase his competencies in self-care skills. It was also noted that Claimant’s mother hopes that he will be able to walk with a walker. He can currently ambulate his walker 15 feet, but he does not like using the walker (Exhibit J).

5. In agreeing to withdraw her request for a fair hearing on March 23, 2006, Claimant’s mother expressly reserved the right, in the event funding was discontinued after six months, to file another Fair Hearing Request and to request retroactive reimbursement for the family’s private funding of Claimant’s RTF program (Exhibit D). It appears, as more fully discussed in Factual Finding 8, that the March 23, 2006, agreement was a solution implemented to provide Claimant with necessary PT, as Claimant was not receiving that service at school, and his PT program at CCS was terminating.<sup>6</sup> There was no evidence that Claimant is receiving any PT other than that provided by his RTF program.<sup>7</sup> No evidence was presented at hearing that Claimant is now able to access PT elsewhere in a manner that is more effective and/or economical.

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<sup>4</sup> It appears that Claimant’s family began privately funding Claimant’s RTF program in July of 2005, and that the Service agency paid for this program from some time in May 2006 until sometime in November, 2006 (Exhibit D). Claimant’s mother signed the Fair Hearing Request on November 29, 2006 (Exhibit A).

<sup>5</sup> The April 24, 2006, IFSP resulted from a March 23, 2006, IFSP meeting.

<sup>6</sup> Claimant’s history with CCS-provided PT appears to have been spotty. The evidence reflects that for some period of time in 2005, as well as from May 2006, to the date of the hearing, Claimant was unable to obtain PT services from CCS (Exhibit E).

<sup>7</sup> Claimant’s occupational therapist has been working with him on issues of better head and neck control and fine motor skills. Although occupational therapy and PT can sometimes be used to address the same issues, there is no evidence that Claimant is

6. The RTF Therapeutic Riding Program is a self-described therapeutic horseback riding program that can benefit individuals with cerebral palsy and mental retardation (Exhibit 2). RTF participants ride on a horse while being led by an instructor, with two “sidewalkers” assisting the rider on either side. Therapeutic riding has been used since the early 1950’s in Europe as a tool for improving the lives of individuals with disabilities. In 1969, NARHA was founded to promote and support therapeutic riding in the United States (Exhibit 4). In Claimant’s program, the sidewalkers help to hold him upright. Claimant pushes against the sidewalkers’ hands to sit upright, keeping his trunk lifted, increasing his overall strength and stamina. RTF is also working with Claimant to improve his balance, and to improve his ability to pick up objects and hold them. This is congruent with the IFSP goals for Claimant to be able to function more independently and to increase his competency in self-care. The 2006 session notes from RTF Program (Exhibit 5) state that when Claimant began the program, he was unable to hold his body up by himself--he needed constant support from both of his “sidewalkers”, and was only able to stay on the horse for 10 or 15 minutes. He has progressed to the point of being able to stay on the horse for the entire 30 minute session. He has become much stronger and is working on lifting his chin and keeping his eyes forward. When Claimant began RTF, he was unable to hold the reins, and could not pick up or hold any of the rings or toys used in the program. Now he can hold the reins for short periods of time in addition to the hand hold on the saddle, and he holds the rings and toys.

7. The Service Agency based its decision to discontinue funding Claimant’s RTF program on Welfare and Institutions Code section 4791, subdivision (e)(3)(A),<sup>8</sup> and California Code of Regulations, title 17, section 54326, subdivision (d)(1), which instruct the Service Agency to consider “the family’s responsibility for providing similar services to a child without a disability.” The Service Agency’s position is that as a matter of policy, it generally does not fund equestrian therapy, because, programs such as RTF are “enrichment programs,” and not viewed by the Service Agency as a therapeutic intervention.

8. The Service Agency presented little evidence to support its position. However, the Service Agency did include in its Exhibits a November 21, 2005, letter from Nicolette Lawrence, Program Manager for Harbor Regional Center, denying a prior request by Claimant that the Service Agency fund his equestrian therapy (Exhibit F). Ms. Lawrence stated that “Ride to Fly is not a therapeutic intervention. It is not supervised or coordinated by any licensed individual who can ensure that appropriate therapeutic goals are established and coordinated.” (Exhibit F.) Ms. Lawrence was not present at the hearing and was therefore not subject to voir dire as an expert witness. Therefore, her expert qualifications to give such an opinion could not be established. This must be

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receiving any type of intervention, other than RTF, to help him with his overall strength and balance.

<sup>8</sup> Unless otherwise indicated, all references to Code sections herein denote the Welfare and Institutions Code.

considered in assigning weight to this evidence. There was an offer in Ms. Lawrence's November 21, 2005, letter to assist the family in "working with the South Bay MTU to determine ways in which Jack can receive his PT." Ms. Lawrence also offered that if the Service Agency were "unable to assist with obtaining PT from CCS, HRC can explore the possibility of short term provision of this service until CCS staff has been retained." It appears, from Exhibit E (Letter from Dolores Burlison, Manager of Right Assurance for Harbor Regional Center, to Claimant's mother dated March 23, 2006), that Service Agency's funding of Claimant's equestrian therapy was the short term solution implemented to provide Claimant with PT. At the hearing, Service Agency did not present any evidence that it offered Claimant a more beneficial or cost effective alternative to his RTF program.

### **LEGAL CONCLUSIONS**

1. Claimant's appeal of the Service Agency's termination of funding for equestrian therapy is sustained.
2. The Service Agency is required to secure services and supports that meet the individual needs of the consumer (section 4501.) The needs of the consumer are determined through the Individual Program Plan (IPP) or IFSP process, and the services provided should "be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources." (Section 4646, subdivision (a).)
4. In implementing the IPP or IFSP, regional centers shall "first consider services and supports in natural community, home, work, and recreational settings." (*Id.*) "Services and supports shall be flexible and individually tailored to the consumer and, where appropriate, his or her family." (*Id.*) "A regional center may. . . purchase services or supports for a consumer from any individual or agency which the regional center and consumer (or, where appropriate, his or her parents, legal guardian, or conservator, or authorized representatives) determine(s) will best accomplish all or any part of that consumer's program plan." (*Id.*)
5. Section 4512, subdivision (b), states in pertinent part:

Services and supports for persons with developmental disabilities means specialized services and supports or special adaptations of generic services and support directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives. . . . Services and supports listed in the individual program plan may include, but are not limited to, . . . recreation, . . . .

Claimant's RTF program is a special adaptation of a horseback riding program directed toward physical rehabilitation and the alleviation of the effects of

Claimant's cerebral palsy, particularly with regard to core strengthening and being able to pick up and hold objects (Factual Findings 6 and 7).

6. Section 4646, subdivision (b) provides, in pertinent part, that any service policies established by the Service Agency to generally govern the provision of services may not take precedence over the established individual needs of the consumer, which are ultimately paramount. (See *Association of Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal. 3d 384, 390-393.)<sup>9</sup> The Service Agency may not rely on a blanket exclusion policy (Factual Finding 8) to deny services; rather, it must evaluate Claimant's individual needs. Claimant was assessed as needing PT (Factual Finding 2).

7. Because: (1) the evidence suggests that the effects of Claimant's cerebral palsy were somewhat ameliorated by the RTF program (Factual Findings 3 and 6), (2) RTF is the only PT Claimant currently receives (Factual Finding 8), and (3) Service Agency presented insufficient evidence supporting a basis for a change in service (Factual Findings 5 and 8), Claimant's desire to continue the program as a part of his IFSP should be granted. There was no evidence presented which indicated that the Service Agency had provided a more beneficial or cost effective alternative to Claimant's equestrian therapy (Factual Finding 5). Rather, Service Agency was under the impression that Claimant was receiving PT through his school program and CCS (Factual Finding 2). If the program can continue to be funded as a cost-effective option, this would be in Claimant's best interest. (See section 4646.)

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<sup>9</sup> The decision in *Association of Retarded Citizens* held that the Department of Developmental Services can not enact regulations that would thwart the obligation to meet a consumer's needs on an individualized basis. It follows that, if the Department could not enact such regulations, then the individual regional centers can not enact general policies that bar them from meeting the established individual needs of a given consumer.

WHEREFORE, THE FOLLOWING ORDER is hereby made:

**ORDER**

The Harbor Regional Center shall reinstate funding for Claimant's Ride to Fly Therapeutic Riding Program at the rate of one session per week and shall reimburse Claimant's family for all sums they have expended to privately fund this program for Claimant since Service Agency's termination of benefits in or about November of 2006. However, in no event shall Service Agency be required to reimburse Claimant's family for more than one session per week.

DATED: February 8, 2007

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SANDRA L. HITT  
Administrative Law Judge  
Office of Administrative Hearings

**NOTICE**

**This is the final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.**